

5-APR. '02 (WED) 12:25

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P. 001



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Reference:

To (individual): ANN CASIDY

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From (individual): JOHN LECKEY

Date: 3/4/02

Time: 12.10 p.m.

Total Pages: 4

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Notes:

Lackey Mr, The Coroner

From: Nicolas Hanna (nick.hanna [REDACTED])  
 Sent: 29 March 2002 00:00  
 To: John Lackey; Suzanne Anderson; Gemma Loughran  
 Subject: Middleton judgment summary

[2002] All ER (D) 456 (Mar)

**\*R (on the application of Amin) v Secretary of State for the  
 Home Department  
 R (on the application of Middleton) v Western  
 Somersetshire Coroner  
 [2002] EWCA Civ 390**

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Court of Appeal, Civil Division  
 Lord Woolf CJ, Laws and Dyson LJ  
 27 March 2002

*Human rights – Life – Deprivation – Prisoner being murdered in custody by cellmate – Secretary of State declining to hold public inquiry – Whether obligation of state to investigate death requiring that public inquiry with participation by deceased's family be held – European Convention on Human Rights, art 2.*

*Human rights – Life – Deprivation – Coroner – Inquest – Verdict – Prisoner committing suicide in cell – Obligation of state to investigate death – Coroner ruling that jury not entitled to return verdict of neglect – Whether inquest able to satisfy obligation of state to investigate death – European Convention on Human Rights, art 2.*

The two appeals before the court raised issues as to the application in United Kingdom domestic law of art 2 of the European Convention on Human Rights, which provided that 'everyone's right to life shall be protected by law'. Article 2 imposed two obligations on the state: an obligation not intentionally to take life, and to take reasonable protective measures to protect an individual whose life was at risk whether from the criminal acts of others or from suicide; and an obligation to investigate deaths where arguably there had been a breach of the substantive obligation. The first appeal concerned the murder of a young man by his cellmate at a young offender institution; the second concerned the death of a young man who had hanged himself in prison. In the first case, the family of the deceased applied for judicial review of the decision of the Commission for Racial Equality (CRE) not to allow the family to participate in its investigation of his death; against the decision of the coroner not to resume the inquest into his death after the conviction of his cellmate for murder; and against the refusal of the Secretary of State to hold a public inquiry. The judge decided to adjourn the applications against the CRE and the coroner. He allowed the application against the Secretary of State on the basis that an independent public investigation had to be held to satisfy the obligations imposed by art 2. In the second case, the coroner ruled that the issue of neglect should not be left to the inquest jury. When the jury announced their verdict, they produced a note which indicated that the Prison Service had failed in their duty of care to the deceased. Despite a request from the deceased's family, the coroner refused to append the note to the inquisition. The deceased's mother applied for judicial review of the coroner's refusal to do so, seeking a mandatory order requiring him record the jury's findings as set out in the note. The judge refused to grant the relief sought, but declared that by reason of the restriction on the verdict, the inquest did not meet the requirements of art 2. The Secretary of State appealed against both decisions. In the first case he submitted that the judge should not have determined the challenge to the Secretary of State's decision before considering the claims against the CRE and the coroner; that the obligation to investigate a death arising under art 2 was not triggered on the facts of the case; that the judge should not have concluded that an investigation would not satisfy art 2 unless there was a sufficient element of

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public scrutiny and the next of kin were involved to an appropriate extent; and that the judge should have held that the obligation had been discharged on the facts of the case.

The appeal in the first case would be allowed. The appeal in the second case would be allowed in part.

(1) The question for the judge in the first case was the objective question whether the state had fulfilled its obligations under art 2, and the Secretary of State was a proper respondent to that question. Central government was the proper body to stand in the shoes of the State when it was called upon to answer an alleged violation of art 2, including and in particular a violation of the procedural duty to investigate.

(2) In the light of a recent decision of the European Court of Human Rights it was accepted that the obligation to investigate was triggered on the facts of the first case; *Edwards v UK* [2002] ECHR 46477/99 considered.

(3) Publicity and family participation were not necessarily discrete compulsory requirements which had to be distinctly and separately fulfilled in every case where the procedural duty to investigate was engaged. There was no universal formula for all investigations undertaken in fulfilment of art 2.

(4) On the facts of the instant case, the procedural obligation to investigate had been discharged.

(5) When it was necessary in order to vindicate art 2 for an inquest jury to give, in effect, a verdict of neglect, it was permissible to do so. For the purpose of vindicating the right protected by art 2 it was

more important to identify faults in a system rather than individual acts of negligence. The identification of defects in a system could result in it being changed, whereas a finding of individual negligence was unlikely to lead to that result. The inability to bring in a verdict of neglect (without identifying any individual as being involved), significantly detracted, in some cases, from the capacity of the investigation to meet the obligations arising under art 2; *R v North Humberside and Scunthorpe Coroner, ex p Jamieson* [1994] 3 All ER 972 considered.

Decision of Hooper J [2001] All ER (D) 69 (Oct) reversed. Decision of Stanley Burton J [2001] All ER (D) 217 (Dec) reversed in part.

*Patrick O'Connor QC* and *Martin Sorjoo* (instructed by *Imran Khan & Partners*) for the claimant in the first case.

*Ben Emmerson QC* and *Peter Weatherby* (instructed by *Howells*) for the claimant in the second case.

*Jonathan Crow*, *Rabinder Singh* and *Martin Chamberlain* (instructed by the *Treasury Solicitor*) for the Secretary of State and the coroner.

Kate O'Hanlon Barrister.

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++ Coroners' Society of England & Wales ++  
Appendix

**Amin/Middleton (Ct. Appeal – judgement handed down 27 March 2002)**

These cases, and the combined judgement, develop the principles covered by Jamieson.

At para. 37. - It was held that a verdict of neglect could identify a failure in the system adopted by the Prison Service to reduce the incidence of suicide by inmates. Alternatively it might do no more than identify a failure by an individual officer to perform his duties properly

At para. 38 – for the purposes of vindicating the right protected by Art.2 it was more important to identify faults in the system than individual acts of negligence. The inability to bring in a verdict of neglect (without identifying any individual as being involved) significantly detracted, in some cases, from the capacity of the investigation to meet the obligations under Article 2.

At para. 31 - There is a need to take due account of the HRA, where a coroner knew that the inquest was to be the effective inquiry by the state to satisfy its obligations under article 2 it was for the coroner to construe the Coroners Rules in the manner required by S.6(2)(b) of the HRA. R.42 can and should (contrary to Jamieson) when necessary be construed (in relation to both criminal and civil liability) only as preventing an individual being named, with the result that a finding of System Neglect would not contravene that rule. 219

At Para. 92 - In general, Jamieson continued to apply to inquests, but where it was necessary so to vindicate article 2 in order to give effect a verdict of Neglect, it was permissible to do so. The requirements were specific to the particular inquest being conducted and would only apply where in the judgement of the coroner a finding by the jury on Neglect could serve to reduce the risk of repetition of the circumstances giving rise to the death. Subject to the coroner, in appropriate cases, directing the jury when they can return what would, in effect, be a rider identifying the nature of the neglect that they have found, the rules will continue to apply as at present. The proceedings should not be allowed to become adversarial.

In summary, the judgements are lengthy and need to be studied with care. There also appears to be a potentially substantial departure (beyond the interpretation and application of R.42) in the definition of Neglect from that given by Jamieson, with possible confusion between [coronal] Neglect and the tort of Negligence. An appeal to the House of Lords, if it does occur, might well be an opportunity to clarify this.

When the judgement has been finalised (to date, it is only published in draft) I hope that it will then be possible for the Home Office to circulate the same, with an appropriate commentary.

MJCB